

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:13-cv-679-FDW
(3:11-cr-393-FDW-1)**

RICARDO TORRES CASTILLA,)
)
 Petitioner,)
)
 v.)
)
UNITED STATES OF AMERICA,)
)
 Respondent.)
_____)

O R D E R

THIS MATTER is before the Court on an initial review of Petitioner’s motion to vacate, set aside or correct sentence, filed pursuant to 28 U.S.C. § 2255. For the reasons that follow, Petitioner’s § 2255 motion will be dismissed.

On December 13, 2011, Petitioner was indicted by the grand jury in this district on one count of illegal re-entry into the United States after having been deported, and having been convicted of a felony, all in violation of 8 U.S.C. § 1326(a), (b)(1). (3:11-cr-393, Doc. No. 1: Indictment). On June 29, 2012, Petitioner entered a plea of guilty without benefit of a plea agreement. Defendant was sentenced on November 29, 2012, to 30-months’ imprisonment. (Doc. No. 16: Judgment in a Criminal Case). On September 6, 2013, Petitioner filed a pro se notice of appeal to the United States Court of Appeals for the Fourth Circuit. (Doc. No. 20). According to the docket, as of December 13, 2013, Petitioner’s appeal is still pending before the Circuit Court.

Pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings, sentencing courts are directed to promptly examine motions to vacate, along with “any attached exhibits and the record of prior proceedings” in order to determine whether a petitioner is entitled to any

relief. The Court has considered the record in this matter and applicable authority and concludes that this matter can be resolved without an evidentiary hearing. See Raines v. United States, 423 F.2d 526, 529 (4th Cir. 1970).

The Court finds that as Petitioner's direct appeal is presently pending before the Fourth Circuit, Petitioner's § 2255 motion should be dismissed without prejudice.

IT IS, THEREFORE, ORDERED that Petitioner's Section 2255 motion is **DISMISSED** without prejudice. (Doc. No. 1).

IT IS FURTHER ORDERED that the Court declines to issue a certificate of appealability as Petitioner has not made a substantial showing of the denial of a constitutional right. See generally 28 U.S.C. § 2253(c)(2); see also Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a "petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong") (citing Slack v. McDaniel, 529 U.S. 473, 484-85 (2000)). Further, the Court finds that Petitioner has failed to demonstrate that the dispositive procedural rulings are debatable. See Slack, supra. As a result, the Court declines to issue a certificate of appealability. See Rule 11(a), Rules Governing Section 2255 Proceedings for the United States District Courts, 28 U.S.C. § 2255.

The Clerk is respectfully directed to close this civil case.

Signed: December 13, 2013



Frank D. Whitney
Chief United States District Judge

